

Animal Protection and Animal 'Rights' in Hungary

Toth, Zoltan J.

Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Toth, Z. J. (2012). Animal Protection and Animal 'Rights' in Hungary. *Jogelméleti Szemle/ Journal of Legal Theory*, 4, 166-175. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-442983>

Nutzungsbedingungen:

Dieser Text wird unter einer Deposit-Lizenz (Keine Weiterverbreitung - keine Bearbeitung) zur Verfügung gestellt. Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

Terms of use:

This document is made available under Deposit Licence (No Redistribution - no modifications). We grant a non-exclusive, non-transferable, individual and limited right to using this document. This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

Animal Protection and Animal 'Rights' in Hungary

I. A brief theoretical historical introduction

The animals' welfare is not an ancient postulate; it is only the product of the modern era. After the World War II. the idea of 'humanity' spread out to such spheres that had been imaginable prior to that. In the philosophical thinking the idea that animals, or at least certain kinds of animals, are *sentient beings* that deserve protection from being harmed, both physically and psychically, appeared in the '70s in the Western countries. This view, however, had a long journey to go. For example, Descartes deemed that animals are, simply, machines, no different in principle from clocks. He denied that they have minds, and, consequently, thought they lack reason.² Kant did not recognise animals as moral agents either, viz., on the ground that they are not autonomous, that is, they are not ends-in-themselves, in contrast to humans, but he stated it is immoral to be cruel to them. He claimed that those people who hurt animals are more likely to be capable of hurting other humans, too.³ The first real pioneer of the case for animals' weal was, however, Jeremy Bentham, the English utilitarian philosopher. He believed that particular animal entities are *sensitive beings*⁴ at least to the same extent as certain humans. As he wrote: "The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. ... It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate?"⁵ Namely, "the question is not, Can they reason? nor, Can they talk? but, Can they suffer?"⁶ And the answer, that is being recognised at present, is that yes, they as living entities capable of feelings can suffer and feel pain.⁷ On the basis of this recognition did the regulations come into being across the Western countries in the 70's, 80's and 90's which began to protect certain kinds of animals from unnecessary physical pain and mental suffering that humans can cause, either with intent or by recklessness, to them.

Nevertheless, these regulations do not ban people from killing animals, only prescribe that this killing is legally possible in certain instances and without causing animals needless suffering. For example, slaughter in abattoirs is not legally forbidden and this is also the case concerning animal experiments, albeit in the most modern philosophical debates there are

¹ Associate Professor, Department of Jurisprudence, Faculty of Law at Karoli Gaspar University, Budapest, Hungary

² Taylor, Angus: *Animals & Ethics: An Overview of the Philosophical Debate*. Broadview Press, Peterborough, Canada, 2003, pp. 35-40.; Regan, Tom: *The Case for Animal Rights*. University of California Press, Berkeley and Los Angeles, California, USA, pp. 3-5.

³ Taylor, *op. cit.* pp. 44-49.

⁴ Bentham, Jeremy: *An Introduction to the Principles of Morals and Legislation*. In: *The Works of Jeremy Bentham*, Vol. I., Edinburgh, 1843, p. 142.

⁵ Bentham, *op. cit.* p. 143.

⁶ *Ib.*

⁷ The term "animal 'suffering'", according to Marian Step Dawkins, "[c]learly refers to some kinds of subjective experience which have two distinguishing characteristics. First, they are unpleasant. They are mental states we would rather not experience. Secondly, they carry connotations of being extreme." (Dawkins, Marian Step: *Scientific Basis for Assessing Suffering in Animals*, p. 28. In: Singer, Peter (ed.): *In Defense of Animals. The Second Wave*. Blackwell Publishing, Malden, MA, USA – Oxford, UK – Carlton, Victoria, Australia, 2008, pp. 26-39.

standpoints which deem that using animals for, among others, drug experiments or eating them is morally unjustifiable and, consequently, ought to be prohibited by national laws.⁸ In Hungary, in accordance with the international trends, there are no explicit rules on animal 'rights' like that; the Hungarian law merely limits the cruel treatment of animals.⁹

II. The regulation in Hungary

In Hungary, the first law on animal protection was enacted in 1998 (numbered and named as Act XXVIII of 1998 on Protection and Careful Treatment of Animals, hereafter: '*Act on Animal Protection*' or '*Animal Protection Act*') and it entered into force in 1999. The preamble of this law declares the principle that "animals are living entities capable of feeling, suffering and expressing happiness"; therefore, "respecting them and ensuring that they would generally feel good shall be everyone's moral obligation". (In this way, the doctrines formed by Bentham two centuries ago are now basically accepted.) The justification for this Act confirms that legislative motive that some animals (typically vertebrates) are living creatures capable of emotions and expressing happiness, satisfaction, and terror. The declared purpose of the Act is to advance the protection of entities in the animal world, which means that protection shall be granted not to human beings but rather to animals as individual living creatures. The former regulation on nature and environment, and even the nineteenth-century prohibition of animal torture in Act XL of 1879 (the so called "Code on Petty Offences" which supplemented the Hungarian Penal Code) focused on the protection of human beings' living conditions, calmness, and sense of morality instead of the emotions, pains, and needs of animals.¹⁰ Consequently, the Hungarian Act on Animal Protection is a significant advancement in the way of treating animals as individuals and self-values, and it considers the protection of these entities important for itself (and not for the reason for ensuring people's interests). In Hungary, this Act protects animals in many ways. It forbids, for example, animal torture, training animals for fighting, and force-feeding animals. It is against the law to force animals to perform activities substantially above their abilities or to subject them to unnatural and self-abusive activities.¹¹ The justification for the Act also argues that animal-keepers shall have certain obligations with regard to animals; they shall look after them, and this legal obligation is morally grounded and established.

⁸ "[w]e demand an end to raising animals for food, an end to killing them for their fur. <<Not larger cages>>, we declare, <<empty cages>>." (Regan, p. xiv.); "[a]ll research that harms animals should be abandoned, even if that means foregoing the benefits that would have accrued." (Taylor, p. 143.); "What we must do is bring nonhuman animals within our sphere of moral concern and cease to treat their lives as expendable for whatever trivial purposes we may have." (Singer, Peter: *Animal Liberation*. Pimlico, London, 1995, p. 20.)

⁹ For the results of the animal rights movement see e.g.: Cassuto, David – Lovvorn, Jonathan – Meyer, Katherine: *Legal Standing for Animals and Advocates*, *Animal Law*, Vol. 13 (2006-2007), pp. 61-86.; Favre, David: *Integrating Animal Interests into Our Legal System*, *Animal Law*, Vol. 10 (2004), pp. 87-98.; Chilakamarri, Varu: *Taxpayer Standing: A Step toward Animal-Centric Litigation*, *Animal Law*, Vol. 10 (2004), pp. 251-282.; Lovvorn, Jonathan R.: *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, *Animal Law*, Vol. 12 (2005-2006), pp. 133-149.; Otto, Stephan K.: *State Animal Protection Laws - The Next Generation*, *Animal Law Vol.*, 11 (2005), pp. 131-166.; Druce, Clare – Lymbery, Philip: *Outlawed in Europe*. In: Singer, Peter (ed.): *In Defense of Animals. The Second Wave*. Blackwell Publishing, Malden, MA, USA – Oxford, UK – Carlton, Victoria, Australia, 2008, pp. 123-131.

¹⁰ This is also proven by the fact that, according to this Code, animal torture or abuse ought to have been deemed as a petty offence not in itself, but only if it was committed in public and in a scandalous way.

¹¹ Act XXVIII of 1998, 6. §.

It is interesting to note, that the Act provides an exception to the prohibition on force-feeding animals: it is still permissible to force-feed ducks and geese by domestic and traditional methods. One of the most important products exported by Hungary is fat goose-liver. 1800-1900 tons of fat goose-liver are produced by Hungary annually,¹² and approximately 75% of that amount will be exported.¹³ The most significant demand market is France,¹⁴ so it is not accidental that French farmers regularly protest against the import of Hungarian fat goose-liver, and they demand protectionist measures by the French government. The other noteworthy exception of an agricultural nature applies to goose-feather stripping. It must be noted, however, that in connection with goose-feather stripping some hysteria has been generated in an artificial way. Nowadays, goose-feathers are not 'stripped' as in the past; feathers are not torn out of the live tissue of the animal, only the feathers whose end has become keratinized are pulled out from the goose. This method, if appropriately applied, should not cause any pain or suffering to the goose since the animal would shed such overmature feathers anyhow. By the way, rather rigorous regulations apply to feather stripping. It is forbidden, for example, to wet geese feather, choke the windpipe of the birds, or to carry out feather-plucking in a temperature below an average of 15 degrees Celsius. Should skin injury occur, then it should immediately be treated by veterinary medical products.

A further provision of the Act on Animal Protection regarding individual animal entities is to guarantee that animal-keepers are obliged to provide animals with living conditions suitable for their physiological needs, adequate and safe shelters, and enough space for their normal healthy movement. It is forbidden to oust, get rid of, or desert a (domesticated) animal. No surgical interventions are allowed for non-medical or non-sterilization reasons, but purely for altering animals' appearance.¹⁵

The Act generally stipulates that animals shall not be killed for reasons and under circumstances that are unacceptable or intolerable. The crucial and debatable point of this regulation is the question of what is to be considered 'an acceptable reason or circumstance'. Pursuant to the Act on Animal Protection the purpose of nutrition, fur production, animal stock control, incurable diseases, injuries, the danger of infections, pests clearing, the prevention of otherwise unavoidable attacks and, finally, scientific research are deemed to be such acceptable reasons and circumstances.¹⁶ This section of the Act was modified not long ago, namely in November, 2011 by the Hungarian Parliament,¹⁷ and it now regulates that only chinchillas and angora rabbits may be used for purposes of fur production. (The rationale for this regulation is that, besides these animals, others have practically never been bred for the sake of their fur for almost two decades now. It is interesting to note, by the way, that should anyone insist on breeding other animals for fur production, and should the authorities become aware of such an activity, if those animals could not be sheltered in a zoo, then they would have to be killed in order to preserve the present state of Hungary's fauna.¹⁸ This may be regarded as a rather strange provision in a law on animal protection.

¹² Cf.: Toaso, Szilvia – Birkas, Endre – Vincze, Judit: The Present State and Prospects of Hungarian Goose Farms after EU Accession, p. 70. In: *Gazdálkodás: Scientific Journal on Agricultural Economics*, Vol. 49, Special Issue, No. 12, 2005, pp. 70-77.

¹³ *Ib.*

¹⁴ *Op. cit.* p. 71.

¹⁵ Act XXVIII of 1998, 10. §.

¹⁶ Act XXVIII of 1998, 11. §.

¹⁷ This amendment (named and numbered as Act CLVIII of 2011 on the Amendment of Act XXVIII of 1998 on Animal Protection) was promulgated in the Hungarian Official Journal on 29th November, 2011 and will enter into force on 1 January, 2012. In the following, as it is usual in the Hungarian law, I will refer not to the sections of this amendment act but the sections of the amended original Act XXVIII of 1998.

¹⁸ Act XXVIII of 1998, 19/A. §.

As a further modification in the new regulation, the Act stipulates that in the case of breeding dogs and cats, the *purpose* of nutrition and fur production shall not be deemed as acceptable reasons. Moreover, irrespective of the *aim* of breeding, it is unacceptable that dogs or cats *be used for* nutrition or fur production.¹⁹ According to the justification for the amendment of the Act, the explicit enactment of such prohibitions are necessary because, due to globalization, more and more minorities live now in Hungary who from time to time are suspected or alleged to eat dogs or cats although none of these suspicions or allegations have ever been proven to date. Since this is alien to Hungarian customs, the amendment of the Act on Animal Protection has set forth these prohibitions with preventive intentions; however, Regulation 1523/2007/EC, which shall be directly applicable in all EU Member States including Hungary as well, also sets forth such prohibitions.

Finally, a further curiosity in the amendment is that in the future, after the entry into force thereof, dogs can be declared dangerous only in cases if the behaviour of the *individual* dog itself gives grounds for that, and complete *races* of dogs cannot be declared dangerous. The score of it was a decision by the Hungarian Constitutional Court²⁰ in which it held that the Government Decree No. 35/1997. (II. 26.) which declared the pitbull terriers dangerous is unconstitutional because pitbull terriers cannot be differentiated unequivocally from staffordshire terriers. Hence, the amendment of the Act on Animal Protection enacted a new provision in the Act which disposes that "dangerous dog is a dog that is declared dangerous by the animal protection authority".²¹

Returning to the original text of the Act on Animal Protection, the Act – in order to ensure humane treatment (*sic!*) (this term expressly appears in the Act's justification as it is) – also stipulates that animals are only allowed to be killed after they are drugged (except for some special cases, *e.g.* the cutting of rabbits or poultry).²² Animals therefore can be killed, but their unnecessary suffering must be prevented and this applies to both physical and mental suffering.

Based on this, if animals which are raised, for example, for their meat and dairy products are not slaughtered immediately, then they have to be fed and provided with a restful environment for the period awaiting their eventual slaughter.²³ (At the same time, it must be mentioned that not only compulsory but ritual slaughter of animals is allowed as well.)²⁴ Slaughter methods regarded to be 'humane' by the implementation degree of the Act may include use of pistols, trauma caused by fatal head concussion (*i.e.* striking animals dead), electrocution, carbon-dioxide gas, beheading, and twisting the neck of poultry and other birds, or in the case of some birds (like quails, partridges or pheasants) use of vacuum-chambers, and with respect to furred animals use of various gases, electrocution or pistols in addition to drugs with hypnotic effects.²⁵

Furthermore, during the transportation of animals, causing unnecessary suffering or pain must be avoided, adequate drinking water, food, and appropriate litter must be provided, injuries must be avoided, enough space for movement and protection against adverse weather conditions should be provided, enough air should be supplied as well as a solid slip-proof flooring.²⁶ The same must apply to the circumstances and conditions of animal retention in the

¹⁹ Act XXVIII of 1998, amended 11. §.

²⁰ Decision 49/2010. (IV. 22.) AB of the Constitutional Court of the Republic of Hungary.

²¹ Act XXVIII of 1998, 24/A. § (2).

²² Act XXVIII of 1998, 12. § (1).

²³ Act XXVIII of 1998, 15. §

²⁴ Act XXVIII of 1998, 19. § d).

²⁵ FVM Decree No. 9/1999. (I. 27.), Appendix 3, 6 and 7.

²⁶ Act XXVIII of 1998, 36-38. §§; Joint KHVM-FVM Decree No. 13/1999. (IV. 28.) on Transportation of Animals.

case of animals kept for experimental purposes. Consequently, animal experiments are allowed in Hungary, but only by obeying strict rules.

Animal experiments are forbidden, for example, for the purpose of producing and manufacturing cosmetics, tobacco, other luxury goods, guns or ammunition.²⁷ For all animal experiments, a license issued by the competent authority is required.²⁸ Animal experiments have to be carried out in a way that would cause animals the least possible pain and suffering, and should affect the least number of animal subjects.²⁹ If there is an alternative scientific method which would lead to the same result without carrying out animal experiments, then animal experiments are forbidden.³⁰ Finally, if an animal during the experiment suffers serious health impairment, then it should be killed in a humane way.³¹ (In fact, the implementation decree of the Act goes as far as regulating that smoking is forbidden in the premises where animals are kept, an optimal level of humidity must be provided, noises, unexpected sounds and vibrations must be eliminated, and light and dark periods must be alternated *etc.*)³²

The amendment adopted in November, 2011 also prohibits using live animals as raffle prizes.³³ The reason for that is that the winners of such animals are usually unprepared to keep them in proper conditions; therefore, the animals' welfare is threatened in many cases of them. Another interesting thing related to this is that the Hungarian regulation ensures the so-called '*animal euthanasia*', *i.e.* mercy killing of animals in order to avoid or prevent the unnecessary prolongation of their suffering.³⁴ Should the survivorship of animals be accompanied by suffering that cannot be terminated or alleviated, and the recovery of such animals cannot be expected, then their owners or, in absence of their owners or when the owner is unknown, the animal health control authority (the *Central Agricultural Office* /CAO/) is obliged to take measures for killing the animals in a way that would not cause them pain.³⁵ If these regulations are violated, the CAO is entitled to impose an animal protection fine³⁶ ranging from 5,000 HUF to 150,000 HUF (about from 16 up to 500 EUR).³⁷ Along with or instead of such fine, the CAO may prohibit offenders from keeping animals (or from keeping certain animals) for a period of 2-8 years, or it may require them to participate in special programs on animal protection, with the purpose of ensuring that all the above mentioned regulations are obeyed.^{38 39}

²⁷ Act XXVIII of 1998, 25. § (6).

²⁸ Act XXVIII of 1998, 25. § (2)-(5).

²⁹ Act XXVIII of 1998, 27. §.

³⁰ Act XXVIII of 1998, 26. §.

³¹ Act XXVIII of 1998, 29. § (2).

³² Government Decree 243/1998. (XII. 31.) on Animal Experiments, Appendix 1.

³³ Act XXVIII of 1998, 8/A. §.

³⁴ Killing, for example, stray dogs does not come within the category of 'animal euthanasia', even if many deem it does. Hence, for instance, the Romanian law passed in November 2011 that allowed the municipal authorities for ordering to kill those stray dogs that nobody rescues from the pound in three days after capture, and which law was held unconstitutional by the Constitutional Court of Romania in January 2012, cannot be considered 'animal euthanasia' since it is (it was) not for the sake of the animals. (See *e.g.*: <http://www.romania-insider.com/romanian-constitutional-court-deems-stray-dogs-euthanasia-law-unconstitutional/45467/#>)

³⁵ Act XXVIII of 1998, 45. § (1).

³⁶ Act XXVIII of 1998, 43. §.

³⁷ Government Decree No. 24/1998. (XII. 31.) on Animal Protection Fine, 2. §.

³⁸ Act XXVIII of 1998, amended 43. § (6)-(12).

³⁹ It is worth mentioning here that the institution of the Hungarian *ombudsman for environmental cases* (officially, the *Parliamentary Commissioner for Future Generations*; colloquially, the '*green ombudsman*') was abolished on January 1, 2012. On this date the new Constitution of Hungary entered into force that new provisions introduced into the Hungarian law. For example, among others, the ombudsman system was rearranged, viz., in lieu of the four up to now autonomous ombudsmen only one remained. The ombudsman for data protection and freedom of information was totally ceased, and the up to now ombudsman (parliamentary commissioner) for the

In the most severe cases, however, when animals are killed or tortured without any reason, even criminal sanctions can be imposed following 2004⁴⁰ (see: Hungarian Act on the Criminal Code Section 266/B. on “Cruelty to Animals”).⁴¹ Nevertheless, Hungarian courts have not sentenced any animal torturer to imprisonment so far although suspended prison sentences have already been imposed in several cases.

III. An outlook: On the rights of animals – in abstracto

The distribution of legal rights (in this case: entitlements, further: ‘rights’) and obligations among the members of society, and defining their contents depend on the substantial sources of law (on the conscious lawmaker or – in the case of customary law – on its unconscious creators as such). (And the actual substantial source of law depends on the related existing belief of a large part of the community. /The essence of this concept is expressed in the best way possible by the „*rule of recognition*” category of Hart⁴²./) Briefly: from among the members of the community regulated by a given legal order that member has a right and in that respect, for whom and for which respect the legislator (precisely: the lawmaker) acknowledges it in any of the positive rules of law. In the lack of such an acknowledgment, from the aspect of positive law, we cannot talk about ‘rights’ (‘entitlements’).

Therefore the source of legal rights in the modern positivized law systems is the lawmaker; however, first of all we should clarify what these so called ‘legal rights’ are. In generally we say the following: if a person has legal rights (in other words if he or she is the subject of entitlements) means that certain things advantageous for him or her may be due to that person, and, also, that acknowledging and honouring it is the obligation of everyone else. It is a consequence of this that the rights always imply the obligations; the legal relationship (‘legal right relationship’) is a relation that has an absolute structure: on one side there is the possibility of the subject to use the option that is defined by his or her entitlement and to enjoy it or its consequences, while on the other side everybody else is obliged to refrain from limiting, hindering or preventing the exercising or enjoyment of the given entitlement.⁴³ There is only one exception therefrom: in case a right of mine in a specific situation would infringe the right of other legal subject(s), then from among the competing rights that right will prevail

national and ethnic minorities rights, the ombudsman for future generations and, finally, the ombudsman for civil rights were fused into one, ‘general’ ombudsman. This general parliamentary commissioner now has two ‘deputy ombudsmen’, amongst them the up to now ‘green ombudsman’, however, without own authority.

⁴⁰ Act X of 2004.

⁴¹ Subsection (1) “Any person:

a) who is engaged in the unjustified abuse or mistreatment of vertebrate animals resulting in permanent damage to the animal's health or in the animal's destruction;

b) who abandons, dispossess or expels a domesticated mammal or a dangerous animal raised in a human environment;

is guilty of a misdemeanor punishable by imprisonment for up to two years, community service, or a fine.”

Subsection (2) “Any person who is engaged in hunting or fishing using implements and methods forbidden by the Act on Hunting and in the Act on Fishing, respectively, shall be punishable in accordance with Subsection (1).”

Subsection (3) “The punishment shall be imprisonment for a felony for up to three years if the criminal conduct specified in Subsections (1)–(2) is carried out in a manner to cause undue suffering to the animal.”

⁴² See: Hart, Herbert Lionel Adolphus: *The Concept of Law*. Clarendon Press, Oxford, 1997, pp. 100-110.

⁴³ This approach may be applied not only in the area of private law, but it also refers to the relations of public law and criminal law entitlements and obligations as well. (For an example of a standpoint different from this see e.g.: Cane, Peter: *Corrective Justice and Correlativity in Private Law*. Oxford Journal of Legal Studies, Vol. 16, No. 3, 1996, pp. 471-475.)

which had been declared by the lawmaker to be of a higher level. (If this cannot be decided, then this interpretation will have to ultimately be decided by the judge within the frameworks of positive law.)⁴⁴ Moreover, the existence of a legal right does not require that the subject of the entitlement should be able to enforce it; it is only required that somebody (lawful representative, prosecutor, NGO entitled to initiate an *actio popularis* etc.) should be able to enforce the right.

Therefore in the above we defined the essence of the existence of entitlements and what conditions have to be met if we wish to talk about rights (*facultas agendi*). Now we already may look for accurately answering the question to whom the entitlements are due, that is, theoretically who can be and who cannot be their subjects. Our definition concerning this is the following: *the subject of a legal right can be a person, who is able or potentially will be (may be) able in the future to exercise the opportunity that is ensured by the legal right or to perceive the consequences of such an advantage.*⁴⁵ Therefore it is not a prerequisite that this entity should also know or should recognise in the future at any time that this (the situation ensured through the advantage) is the realisation ensured by law of the possibility favourable for him/her/it (that is it is the consequence of his/her/its entitlement), and it is not a prerequisite either that he/she/it should be able to perceive, recognise or feel that he/she/it has so-called 'rights'. In this sense any entity may be the subject of a legal right, who or what is able to feel, either now or in the future, the advantages and their impacts as facts; this beyond dispute (even according to the effective Hungarian Civil Code as well) refers to children, the mentally retarded and the *nascituri/nasciturae* (unborn children) as well,⁴⁶ but it does not refer to lifeless matters, since they can be brought under regulation purely as legal objects.

This is the point where the question may be raised whether anything outside humans having at least potentially mental powers *e.g.* animals can be the subjects of legal rights as well. As regards animals (more exactly as regards a certain part of them), today it may still seem to be a little bit strange that we are talking about 'rights', however, according to the above definition (the subject of a legal right can be a person, who is able or potentially will be /may be/ able in the future to exercise the opportunity that is ensured by the legal right or to perceive the consequences of such an advantage), animals are not excluded *ab ovo* from the possibility of becoming subjects of rights;⁴⁷ for this only one condition has to be met: the law (the legal order, that is, the effective laws in the given legal system /*norma agendi*/) should acknowledge that they have certain defined rights. Therefore the subject status of animals depends only on state recognition: positive law may have any kind of provisions in this regard, the same way as it can have any kind of provisions as regards people (or specific

⁴⁴ A legal right therefore cannot exist without a correlating obligation, however this obligation always exists on the non-entitled side of the 'legal right relationship'. Since a right conceptually is a right due to the fact that it provides an opportunity for the subjects of the entitlement to do something, or not to do something or to enjoy something free from impacts. There is no „mandatory right” that would require the subject of the entitlement not only to be authorised but obliged to do something, etc., because in this case it already would not be a right, but an obligation. At the same time, naturally on the non-entitled side of the legal relationship there has to be an obligor (one or more defined persons or everybody else beyond the subject of the entitlement).

⁴⁵ Therefore the essential function of entitlement is not to ensure the restriction free exercising of a behaviour that corresponds to the will of the subject (as it was thought by Bernhard Windscheid and the believers of the will theory), but it serves the protection of an interest that is recognised by the state (according to the concept of Rudolf von Jhering and the interest theory).

⁴⁶ An unborn child, according to the currently effective Hungarian law, has legal capacity only if born alive (see: Act IV of 1959 on the Civil Code of the Republic of Hungary, 8. §); however, there are or there may be such law systems, where, independently of this condition, in view of potentiality, certain rights are due to an unborn child the same way as for example to an infant born alive.

⁴⁷ They may not have obligations due to their nature, the same way as unborn children and infants that obviously do not have the sense of understanding also cannot have obligations.

group of people).⁴⁸ If according to the positive law animals are not subjects of law, that is, they do not have any rights in any respect, then in the given law system animals will not have any rights. (This was the situation in the case of most of the legal systems till the 20th century, disregarding some exceptions – for example according to preceding Indian law(s) cows were considered to be saint animals and were given rights.) However, if the rules of a positive law system recognise the legal subject status of certain animals (at least as regards certain issues), then the given animals (in respect of these issues) will be actually the subjects of these entitlements.

The main question is whether for a modern 21st century state it is proper, morally justifiable or rational to apply this recognition. If we start out from the requirement of moral consistency (which says that objects that are, as regards their relevant attributes, identical with one another have to be managed the same way, and for managing them in a different manner we have to certify the actual difference between the objects that we wish to manage differently), then no other answer than yes may be given to this question, at least in respect of certain animals.

As we have mentioned above, the legal subject status of animals depends up to a certain extent (up to the point it is conceptually not excluded) from its recognition by positive law, that is, from its definition. And this „border” obviously (due to the *nature of the thing*) is the (existing or potential future) capability of perception of a certain level, therefore an animal that does not have this capability and may not have such a capability, conceptually cannot have a legal subject status. Consequently, conceptually (due to the nature of the thing) it is excluded to give rights to those animals (or, for example, to any plants, of course) that do not have this minimal mental capability. At the same time due to the requirement of moral consistency it is not justifiable that, if a positive law system ensures the rights of an injured, mentally ill or mentally retarded person, who is unable to think or who is hardly able to think, moreover of an anencephalic infant, who does not have a brain core responsible for cognitive functions (as it is, certainly, proper that a law system does so), then why this same positive law system should not ensure at least certain rights, *e.g.* being free from torture, of at least those animals that are capable of certain, elementary (or even more developed), level of thinking.⁴⁹ Denying this is nothing else but *speciesism*, that is, discrimination between the species which morally is not different at all from racism or sexism.⁵⁰

As regards the Hungarian legal system, the above-mentioned Section 266/B of the Criminal Code, which protects the animal entities from suffering pains by declaring 'cruelty to animals' a criminal act, may be considered to by such a right (albeit this rule refers only to vertebrates),⁵¹ but it is not excluded that Hungarian courts will interpret in the future in a

⁴⁸ Based only on the fact that a slave society or a state recognising slavery does not consider the slaves as legal subjects, only as legal objects, it cannot be said as regards positive law that these systems are not law systems, it can only be stated that this is not 'just' or 'fair', however, law or „legality” is not an issue of evaluation, but it is an issue of fact. (Otherwise we could not recognise the rules created by the organisations of the Roman Empire to be a „law”.)

⁴⁹ With this we are not denying that the value of the specific living entities cannot be different, but we recognise that causing pain is harmful for all sentient beings capable of feeling pain, and not only for those who have developed cognitive capabilities, therefore narrowing down protection exclusively to the latter ones cannot be justified from moral aspect. (In respect of this see: Singer: *Animal Liberation* /*op. cit.*/ pp. 20-21.)

⁵⁰ As Tom Regan writes: "An individual's race, gender, ethnicity, and class provide no basis whatsoever for ascribing different moral or legal rights. The same is no less true of a difference in species. Only prejudice permits the contrary." (Regan, Tom: *The Day May Come: Legal Rights for Animals*. In: *Animal Law*, 2004, p. 23.) And the same from Peter Singer: "[t]o discriminate against beings solely on account of their species is a form of prejudice, immoral and indefensible in the same way that discrimination on the basis of race is immoral and indefensible." (Singer: *Animal Liberation* /*op. cit.*/ p. 243.)

⁵¹ The criminal code rule that prohibits the torturing of vertebrates authorises these animal entities with the right that they do not have to endure the pains that are caused by people intentionally and needlessly, and it makes the

similar manner certain provisions of the *Animal Protection Act* as well (even if they do not do so at present).

Conclusion

It is obvious, that Hungarian animal protection has caught up with the practice of modern European countries, and even if it is problematic whether animals are entitled to *subjective rights* to avoid physical and mental torture,⁵² or if these provisions simply embody *people's* obligations against other *people* in order to protect their sense of morality, there is no doubt that the Hungarian regulation regards the individual animal lives as extraordinary *value*, and that the provisions in the Act on Animal Protection or another legal norms grant all possible guarantees required in our days. However, the next step in the stair of right-giving has to be the recognition of at least certain animal entities' subjective rights, not only in Hungary but in all the other modern, developed countries with the idea of *rule of law* as well.

obligors of this absolute structure legal relation all humans (the same way as the rules that protect human life, the intactness of the human body or human health ensure the right of humans to the physical integrity of their bodies, making it an obligation for all other humans to refrain from these kind of activities). That is, if we compare for example the fact of 'injuring the body' and 'animal torture', then we can see that the former one does not differ structurally, as regards its impact and implications from the latter one (the only difference exists as regards the subject side).

⁵² This seems to be proven by the fact that Act X of 2004, which made 'cruelty to animals' part of the Hungarian Act on the Criminal Code, acknowledges individual animals as subjects of legal protection and thus as obligees of the crime. Pursuant to the justification of this act, the legal object defended by the crime (apart from the maintenance of public order) shall be "the protection of the life and health of the animal as a creature capable of emotions". (See: Norbert Kis /ed./: The Commentary of the Penal Code. Volume III.: Criminal Law Special (2). p. 988.)